

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4221 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JEEVABHAI N DAMOR

Versus

STATE OF GUJARAT

Appearance:

Ms.Hetal Pandya for MR GM JOSHI for Petitioner
Ms.Nandini Joshi, ASSTT GOVERNMENT PLEADER for
Respondent No. 1, 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 01/09/2000

ORAL JUDGEMENT :

The present petition is filed by a person, who
belongs to scheduled tribe community, who was originally
appointed as a Peon in the office of the Technical

Examination Board and because of his sincere and efficient working and sheer hard work, he came to be promoted as Junior Clerk. Thereafter, by an order dated 24.9.1991 the petitioner came to be promoted as Nondh Madadnish.

2. The petitioner thereafter appeared in the departmental examination in July 1983 and in the said examination he was required to obtain 50 % marks in each paper. However, the petitioner could secure;

54 marks out of 100 in Paper 'I'
58 marks out of 100 in Paper 'II'
20 marks out of 50 in Paper 'III', and
50 marks out of 100 in Paper 'IV'.

He was, therefore, short of 5 marks in Paper III to reach required 50 %. The present petition is filed claiming 5 grace marks.

3. It is the case of the petitioner that 5 grace marks can be divided into two parts, namely, 3 marks to be given by the department for which the department had agreed to, while 2 grace marks are to be at the hands of the Govt. Learned advocate for the petitioner invited attention of the Court to the letter dated 5.3.1990 written by the Director of Technical Education wherein the case of the petitioner is recommended on more than one count, namely,

(i) the petitioner is getting condonation of marks to the extent of 2.5 marks, which will in turn be 3 marks and that the remaining shortfall of 2 marks may be granted by the Govt. under the provisions of Resolution dated 19.12.1979.

(ii) It is also mentioned that the case of the petitioner is of the year 1983, that is to say, an old case.

(iii) The petitioner had appeared in the subsequent examinations also, but he could not be successful. Therefore, his case may be considered sympathetically.

4. The petitioner invited attention of the Court to the contentions raised in para 7 of the petitioner wherein it is stated that,

"Petitioner states that in the aforesaid representation, the petitioner specifically

mentioned that by communication dated 18.12.90, 51 employees and by communication dated 20th July, 1990, 30 employees were declared pass by giving grace marks to them. Therefore, petitioner was entitled to get 10 % grace marks and he was in need of only 5 grace marks and therefore, petitioner applied for granting of grace marks."

5. It is also pointed out on behalf of the petitioner that in the representation dated 18.12.1990 specific instances were also given and on that basis it was requested that the Govt. shall exercise discretion in favour of the petitioner.

6. The reliance is placed on judgement dated 5.4.1988 of this Court (Coram : A.P. Ravani, J.) in Special Civil Application No.614 of 1987, wherein this Court was so much with the said Govt. Resolution dated 19.12.1979 and the Court has held that if the respondent is not able to point out as to how the case of the petitioner is different than that of other similarly situated employees, non granting of additional grace marks is nothing but arbitrary exercise of power and the same is violative of fundamental rights of the petitioner guaranteed under Articles 14 and 16 of the Constitution of India. Therefore, the same is required to be quashed and set aside by this Court.

7. Ms.Nandini Joshi, learned AGP submitted that in view of the provisions of Gujarat Technical Examination Board (Conditions of Service relating to Examination of Clerks) Rules, 1976 and looking to the contents of Govt. Resolution dated 19.12.1979, the petitioner is not entitled for grace marks. She vehemently submitted that if the percentage of the petitioner is calculated, he gets only 52 marks. Therefore, he is entitled to get only 2 condonation marks. Even if additional grace marks are given by the Govt. he will be short of 1 mark for being declared 'pass'. However, Ms.Nandini Joshi is not able to point out as to how the case of the petitioner is different than that of 51 employees who were declared 'pass' by communication dated 18.12.1990 and 30 employees, who were declared 'pass' by communication dated 20.7.1990.

8. In the present case though the petition is of the year 1992 and rule was issued on 24.7.1992, the respondents have not cared to file any reply to the petition. They have also not chosen to controvert the

factual averments made in the petition, more specifically non granting of grace marks and declaring employees 'pass' by the aforesaid two communications dated 18.12.1990 and 20.7.1990, the present petition deserves to be allowed.

9. It was also pointed out by the petitioner that the Honorable Court was pleased to extend protection against reversion in favour of the petitioner and that by virtue of the said protection the petitioner had continued to work on the past since 1992. It would have been in fitness of things, if the Govt. had accepted the recommendations made by respondent no.2 vide letter dated 5.3.1990 and had granted additional 2 grace marks.

10. In the result the petition succeeds. Respondent no.1 is directed to grant 2 grace marks to the petitioner and declare the petitioner 'pass' in the examination held in the year 1983. The petition is allowed. Rule is made absolute accordingly. No order as to costs.

1st September 2000 (Ravi R. Tripathi, J.)

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